

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Noemi Martin	Team: Team # 5	CCRB Case #: 201105724	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/24/2011 9:30 PM	Location of Incident: Inside the #6 train station, located at East 103rd Street and Lexington Avenue	Precinct: 23	18 Mo. SOL 8/24/2012	EO SOL 8/24/2012	
Date/Time CV Reported Wed, 05/04/2011 11:46 AM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Wed, 05/04/2011 11:46 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Leek	26566	945913	023 PCT
2. POM Edgar Figueroa	08440	947751	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Edgar Figueroa	Abuse: PO Edgar Figueroa stopped § 87(2)(b)	
B.POM Daniel Leek	Abuse: PO Daniel Leek stopped § 87(2)(b)	
C.POM Edgar Figueroa	Abuse: PO Edgar Figueroa searched § 87(2)(b)	
D.POM Daniel Leek	Abuse: PO Daniel Leek searched § 87(2)(b)	
E.POM Edgar Figueroa	Discourtesy: PO Edgar Figueroa spoke obscenely and/or rudely to § 87(2)(b)	
F.POM Daniel Leek	Discourtesy: PO Daniel Leek spoke obscenely and/or rudely to § 87(2)(b)	
G.POM Edgar Figueroa	Abuse: PO Edgar Figueroa refused to provide his shield number to § 87(2)(b)	
H.POM Daniel Leek	Abuse: PO Daniel Leek refused to provide his shield number to § 87(2)(b)	

### Case Summary

On May 4, 2011, § 87(2)(b) filed this complaint with the CCRB by mailing in a letter (encl. 5A-5B). § 87(2)(b) waited until May 4, 2011 to file this complaint because he did not have free time before that. This complaint was eligible for mediation, but § 87(2)(b) declined.

On February 24, 2011, at approximately 9:30 p.m., inside of the #6 train station at East 103<sup>rd</sup> Street and Lexington Avenue in Manhattan, PO Daniel Leek and PO Edgar Figueroa stopped § 87(2)(b). The following allegations resulted:

- **Allegation A-Abuse of Authority:** PO Edgar Figueroa stopped § 87(2)(b) § 87(2)(g)  
§ 87(2)(b)
- **Allegation B- Abuse of Authority:** PO Daniel Leek stopped § 87(2)(b) § 87(2)(g)  
§ 87(2)(b)
- **Allegation C-Abuse of Authority:** PO Edgar Figueroa searched § 87(2)(b) § 87(2)(g)  
§ 87(2)(b)
- **Allegation D-Abuse of Authority:** PO Daniel Leek searched § 87(2)(b) § 87(2)(g)  
§ 87(2)(b)
- **Allegation E-Discourtesy:** PO Edgar Figueroa spoke obscenely and/or rudely to § 87(2)(b) § 87(2)(g)  
§ 87(2)(b)
- **Allegation F-Discourtesy:** PO Daniel Leek spoke obscenely and/or rudely to § 87(2)(b) § 87(2)(g)  
§ 87(2)(b)
- **Allegation G-Abuse of Authority:** PO Edgar Figueroa refused to provide his shield number to § 87(2)(b) § 87(2)(g)  
§ 87(2)(b)
- **Allegation H-Abuse of Authority:** PO Daniel Leek refused to provide his shield number to § 87(2)(b) § 87(2)(g)  
§ 87(2)(b).

### Results of Investigation

#### Civilian Statement

##### Complainant/Victim: § 87(2)(b)

- § 87(2)(b) a § 87(2)(b)  
§ 87(2)(b)

##### CCRB Testimony

In a letter dated March 25, 2011 and received at the CCRB on May 4, 2011, § 87(2)(b) provided an initial statement (encl. 5A-5B). On May 13, 2011, § 87(2)(b) was interviewed at

the CCRB (encl. 7A-7F). He was generally consistent in his statements, except with exceptions detailed below.

On February 24, 2011, at approximately 9:30 p.m., § 87(2)(b) walked into the #6 train station located at East 103<sup>rd</sup> Street and Lexington Avenue in Manhattan. § 87(2)(b) was alone and carrying a bag of food. § 87(2)(b) was on his way home after visiting his mother, who lives near the train station. § 87(2)(b) was wearing a red “Pelle Pelle” brand jacket (the jacket does not say “Pelle Pelle,” but there are rhinestones and a logo reading 1978 on the back of the jacket; the front also has white coloring on the sleeves) and a pair of jeans. As § 87(2)(b) entered the station, he saw two uniformed officers to the left, behind the turnstile. § 87(2)(b) swiped his Metro Card and made eye contact with an officer, who he described as a Hispanic male, 5’6”-5’7” tall, 160-170 pounds, with a medium complexion, and a low haircut. In his letter, § 87(2)(b) identified this officer as PO Figueroa, shield #8440. In the CCRB interview, § 87(2)(b) stated that he did not obtain this officer’s name or shield number. The investigation identified this officer as PO Edgar Figueroa of the 23<sup>rd</sup> Precinct. Neither PO Figueroa nor § 87(2)(b) said anything and § 87(2)(b) continued down the stairs to the uptown #6 train.

§ 87(2)(b) walked to the middle of the platform of the uptown #6 train and waited. There were approximately 30 people also waiting for the train. After approximately 5 minutes, § 87(2)(b) saw the officers walking towards him. At this time, the train pulled into the station and § 87(2)(b) positioned himself to get on, when a second officer, described as a white male, 5’11”-6’ tall, weighing 200 pounds, with a chubby build, and blondish hair, stopped and stood next to § 87(2)(b). In his letter, § 87(2)(b) identified this officer by his badge number, #26566. In the CCRB interview, § 87(2)(b) stated that he did not obtain this officer’s name or shield number. The investigation identified this officer as PO Daniel Leek of the 23<sup>rd</sup> Precinct. PO Figueroa stood to § 87(2)(b)’s right side.

When the train doors opened, PO Figueroa went into § 87(2)(b)’s right jacket pocket and removed his Metro Card. § 87(2)(b) brushed his hand away and said “Hey, what are you doing?” PO Leek said to wait a minute. § 87(2)(b) stood there as the train left the station. PO Leek asked for § 87(2)(b)’s ID and he provided it. PO Figueroa asked § 87(2)(b) to put his food down, but § 87(2)(b) said that he didn’t want to put it on the ground. PO Figueroa went to reach for the bag, so § 87(2)(b) placed the bag on a bench. PO Leek asked § 87(2)(b) if he minded being searched and he said yes. PO Leek searched him regardless, while PO Figueroa patted his rear pants pockets. PO Leek placed his hand inside § 87(2)(b)’s front pants and jacket pockets. § 87(2)(b) turned his head and asked PO Figueroa what he was doing. PO Figueroa replied, “You have a fucking problem? Turn around.” § 87(2)(b) began asking why he was being stopped, but the officers did not answer him.

After § 87(2)(b) asked several more times why he was stopped, PO Leek said, “If you shut the fuck up, we will tell you why you are being stopped.” § 87(2)(b) also asked the officers for their badge numbers, but they did not respond. § 87(2)(b) admitted that he was raising his voice at the officers, because he felt violated and thought it was only appropriate to voice his dissent. § 87(2)(b) saw several people looking on and the officers told him to quiet down, because he was making a scene. The officers said that he could be arrested for disorderly conduct. The officers then instructed § 87(2)(b) to follow them upstairs. § 87(2)(b) protested, but followed the officers. § 87(2)(b) was never placed in handcuffs.

Once upstairs, § 87(2)(b) kept asking if he was arrested, but the officers said no. They instructed him to leave the station, but § 87(2)(b) said that it had been his last fare. § 87(2)(b) exited the station with the officers and walked outside. Once outside, PO Leek went to a marked police van that was parked across the street to run § 87(2)(b)’s ID. PO Figueroa remained with § 87(2)(b) and asked if he had ever been arrested. § 87(2)(b) did not answer. PO Figueroa called § 87(2)(b) a smart ass. PO Leek returned and told him that they were looking for a black male

wearing a red “Pelle Pelle” jacket, who had shot someone 3 days ago. § 87(2)(b) asked again for the officers’ badge numbers, but they did not respond when § 87(2)(b) took out his cell phone, PO Figueroa said, “You ain’t fucking taking no pictures.” By then § 87(2)(b) had read PO Figueroa’s badge and saw the name Figueroa and said, “PO Figueroa, I want your badge number.” PO Figueroa did not provide it. The officers then escorted § 87(2)(b) back into the station and let him inside in the turnstile without paying.

### **NYPD Statements:**

#### **Subject Officer: PO EDGAR FIGUEROA**

- *PO Figueroa, a § 87(2)(b) [REDACTED]*
- *On February 24, 2011, PO Figueroa worked from 4:00 p.m. to 12:15 a.m. with PO Daniel Leek. The officers were dressed in uniform and assigned to subway patrol of the #6 train. The officers were in a marked police van, in which PO Leek was the operator.*

#### **Memo Book** (encl. 8A-8B):

- At 9:30 p.m., a black male, later identified as § 87(2)(b) was stopped for fitting the description of a homicide suspect.

#### **CCRB Testimony**

On June 27, 2011, PO Edgar Figueroa of the 23<sup>rd</sup> Precinct was interviewed at the CCRB (encl. 9A-9B). On February 24, 2011, at approximately 9:30 p.m., PO Figueroa and PO Leek were posted inside of the #6 train station at Lexington Avenue and East 103<sup>rd</sup> Street, conducting patrol. The officers were standing behind the turnstile, when they saw § 87(2)(b) enter the station. § 87(2)(b) was carrying a bag and was wearing a red “Pelle Pelle” jacket, which was one of the main characteristics that the officers were looking for in relation to a homicide suspect. The suspect was also listed as being a black male, between 5’9” to 6” tall, all of which matched § 87(2)(b). PO Figueroa explained that there had been a shooting several days prior to this incident and the officers had been assigned to look out for people that fit the description. On this particular day, the officers were reminded of this at the roll call prior to their assignment. There was also a poster (encl. 15) asking the public for information about the shooting, posted near the train station and handed out to the officers during roll call.

PO Figueroa and PO Leek approached § 87(2)(b) who was waiting for the train near one of the middle staircases. PO Leek approached § 87(2)(b) and asked if he could talk to him. § 87(2)(b) immediately became irate, said, “Why are you stopping me?” and raised his arms up in the air. PO Figueroa became suspicious, since the response was uncalled for as PO Leek was courteous upon his approach. PO Figueroa asked § 87(2)(b) if he could frisk him for his safety and § 87(2)(b) said, “Alright.” PO Figueroa frisked § 87(2)(b)’s torso and waistband and then went around to his back pants pockets. When PO Figueroa touched his back, § 87(2)(b) turned around and yelled, “What are you doing?” PO Figueroa replied, “Is there a problem? Is there anything that I shouldn’t find? You got something on you?” PO Figueroa became even more suspicious that § 87(2)(b) had something on him; however he did not feel a bulge. PO Figueroa did not search § 87(2)(b) and PO Leek did not frisk or search him. PO Figueroa denied that he or PO Leek ever said, “You got a fucking problem. Turn around.” During the time PO Figueroa was frisking § 87(2)(b) he vaguely heard PO Leek explaining to him why he was stopped.

PO Figueroa decided to take § 87(2)(b) upstairs and conduct a name check. PO Figueroa also wanted to bring him away from the platform, because the train was approaching and he did not want to escalate the situation. PO Leek and PO Figueroa walked § 87(2)(b) upstairs. He was

never handcuffed. Once upstairs, they exited the train station and PO Leek left to see if he could retrieve the flyer, to show § 87(2)(b) that he fit the description. § 87(2)(b) continued to argue that he was stopped because he is black. After several minutes, PO Leek returned without the flyer, because he did not find it. PO Figueroa denied that he or PO Leek said, “If you shut the fuck up, we will tell you why you are being stopped.” PO Figueroa requested § 87(2)(b)’s ID and he provided it to him. PO Figueroa wrote down § 87(2)(b)’s information for the 250 report. PO Figueroa never left § 87(2)(b)’s presence. § 87(2)(b) asked them both for their names and shield numbers. PO Figueroa provided his information and heard PO Leek do the same. PO Figueroa did not see § 87(2)(b) with a cell phone or a camera. PO Figueroa denied that he or PO Leek said, “You ain’t fucking taking no pictures.” The officers escorted him back inside the station and swiped him into the station. PO Figueroa did not give § 87(2)(b) a stop card, because he does not carry them.

**Subject Officer: PO DANIEL LEEK**

- *PO Leek, a § 87(2)(b)*
- *On February 24, 2011, PO Leek worked from 4:00 p.m. to 12:15 a.m. with PO Edgar Figueroa. The officers were dressed in uniform and assigned to subway patrol of the #6 train. The officers were in a marked police van, in which PO Leek was the operator.*

**Memo Book** (encl. 10A-10C):

- At 9:45 p.m., PO Leek noted that he observed one male, identified from his ID as § 87(2)(b) enter the train station wearing a bright red “Pelle Pelle” leather jacket. § 87(2)(b) fit the description of a male wanted for information in regards to a homicide on February 10, 2011 on East 108<sup>th</sup> Street and Madison Avenue. § 87(2)(b)’s pedigree and contact information was obtained for the 250 report. § 87(2)(b) gave permission to be frisked when asked by this officer and he was frisked for weapons at the scene. He became increasingly hostile during the stop.

**Stop, Question, and Frisk Report**

PO Leek prepared the stop, question, and frisk report (encl. 11), which stated that § 87(2)(b) was stopped for suspicion of criminal possession of a weapon inside of the train station. § 87(2)(b) was stopped and frisked, because he fit the description of a suspect. He was evasive to officers’ questions.

**CCRB Testimony**

On July 18, 2011, PO Daniel Leek of the 23<sup>rd</sup> Precinct was interviewed at the CCRB (encl. 12A-12B). PO Leek’s statement was consistent with PO Figueroa and added the following information:

§ 87(2)(b) repeatedly questioned why he was stopped. PO Leek tried explaining why he was stopped, but § 87(2)(b) did not want to hear him out. PO Leek asked him if they could search him. § 87(2)(b) said that he did not have anything on him and they could search him. PO Figueroa frisked § 87(2)(b)’s rear pockets and waistband as he was standing behind him. PO Leek frisked the front side of § 87(2)(b)’s waistband. PO Leek denied that he or PO Figueroa searched § 87(2)(b) entered his pockets, or removed his Metro Card. PO Leek recalled that § 87(2)(b) turned his head during the frisk, but denied that PO Figueroa said, “You have a fucking problem, turn around.”

After the frisk, PO Leek brought § 87(2)(b) upstairs intending to show him the poster of the homicide, which he had in his vehicle, to prove to him why they stopped him. § 87(2)(b) did not

want to hear the explanation and continue to dispute the stop. Once upstairs, PO Leek went to his car, but did not locate the poster. When PO Leek returned to where PO Figueroa and § 87(2)(b) were standing, he asked for his ID to prepare the 250 report. § 87(2)(b) provided his ID and PO Leek jotted down his information in his memo book. § 87(2)(b) requested their name and shield numbers, which both of them provided. PO Leek did not provide § 87(2)(b) with a stop card and did not have them in his possession that night.

### **NYPD Documents**

#### ***SPRINT and Communication CD***

The SPRINT report X01259 (encl. 14A-14G) and the communications CD (encl. 13) corroborate that a shooting occurred on February 10, 2011 at East 108th Street and Madison Avenue. The suspect was a young, black male, who was wearing a red leather “Pelle Pelle” jacket that had red and silver designs on the back.

#### ***Wanted Poster***

The wanted homicide poster (encl. 15) states that a male named § 87(2)(b) was shot and killed on February 10, 2011 at 2:00 a.m. on East 108<sup>th</sup> Street and Madison Avenue. The homicide suspect is listed as a black male, 5’9”-6” tall, and wearing a red “Pelle Pelle” jacket. A photograph of the said jacket is displayed on the poster.

### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of August 9, 2011, with regard to the incident (encl. 18).

§ 87(2)(b)

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§ 87(2)(b)

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- § 87(2)(b)

### **Subject Officers CCRB History**

- PO Figueroa has been a member of the service for 3 years and there are no substantiated CCRB allegations against him (encl. 2).
- PO Leek has been a member of the service for 3 years and there are no substantiated CCRB allegations against him (encl. 3).

### **Conclusion**

### **Identification of Subject Officers**

- § 87(2)(b) provided the name and shield number of PO Figueroa and the shield number of PO Leek. He also provided the physical description of the subject officers. Police documentation, such as the stop, question, and frisk report identified PO Leek. The officers acknowledged their involvement in this complaint and the allegations were pleaded accordingly.

### **Allegation Not Pleased**

§ 87(2)(b) alleged that the officers said that he could be arrested for disorderly conduct if he did not quiet down, because he was making a scene. § 87(2)(b) admitted that he was being uncooperative, because he was upset about being stopped. Because § 87(2)(b) could have been arrested for his disorderly behavior, it was determined that it did not rise to the level of an allegation of a threat of arrest and therefore it was not pleaded.

### **Investigative Findings and Recommendations**

#### **Allegation A-Abuse of Authority: PO Edgar Figueroa stopped § 87(2)(b)**

#### **Allegation B- Abuse of Authority: PO Daniel Leek stopped § 87(2)(b)**

On February 24, 2011, at approximately 9:30 p.m., inside of the #6 train station at East 103<sup>rd</sup> Street and Lexington Avenue in Manhattan, PO Figueroa and PO Leek of the 23<sup>rd</sup> Precinct stopped § 87(2)(b) because he fit the description of a person suspected of committing a homicide. Police documentation, such as the SPRINT report, communication CD, and the wanted poster all corroborate that a homicide occurred on February 10, 2011 at approximately 2:00 a.m. and the suspected individual is a black male, between 5'9" and 6" tall, who was wearing a red "Pelle Pelle" brand jacket. § 87(2)(b) confirmed that he fit the description and was wearing this jacket on the date of the incident.

Police may stop an individual and question them if the officer has reasonable suspicion that the individual is committing, about to commit or has committed a crime. New York State Criminal Procedure Law, Section 140.50(1) (encl. 1A). NYPD Patrol Guide Section 212-11 (encl. 1B-1D) and the supplement memo regarding Street Encounters (encl. 1E) are consistent with this standard and add that the officer can request identification and an explanation of conduct when they have reasonable suspicion to do so. In addition, the officers are required to prepare a stop, question, and frisk report to document the stop. PO Leek and PO Figueroa justified stopping § 87(2)(b) on the basis that he fit the physical description of the homicide suspect and PO Leek prepared the 250 report accordingly.

A general description alone, even where the jacket color is provided, does not give rise to reasonable suspicion. People v. Hargroves, 296 A.D. 2d 581 (2002-2d Dept.) (encl. 1H-1I). Where a stop is based on a general description, it must be made in close spatial and temporal

proximity to the alleged crime. People v. Tatum, 39 A.D. 3d 571 (2007-2d Dept.); see also People v. Gardner, 16 A.D. 3d 117 (2005-1st Dept.); People v. Bennett, 37 A.D. 3d 483 (2007-2d Dept.) (encl. 1J-1N).

§ 87(2)(g)

§ 87(2)

(h) §

87(2)(g)

**Allegation C-Abuse of Authority: PO Edgar Figueroa searched § 87(2)(b)**

**Allegation D-Abuse of Authority: PO Daniel Leek searched § 87(2)(b)**

§ 87(2)(b) alleged that PO Figueroa went into his right jacket pocket and took out his Metro Card. PO Leek then asked if he minded being searched and § 87(2)(b) said yes. Regardless, PO Leek searched his front pants and jacket pockets while PO Figueroa patted his back pants pockets. PO Figueroa admitted that he frisked § 87(2)(b) but denied that he searched him. PO Leek also stated that he frisked § 87(2)(b) but did not search him.

§ 87(2)(g)

**Allegation E-Discourtesy: PO Edgar Figueroa spoke obscenely and/or rudely to § 87(2)(b)**

§ 87(2)(b)

**Allegation F-Discourtesy: PO Daniel Leek spoke obscenely and/or rudely to § 87(2)(b)**

When § 87(2)(b) asked PO Figueroa what he was doing, he allegedly responded, “You have a fucking problem? Turn around.” When § 87(2)(b) asked PO Leek why he was stopped, he allegedly said, “If you shut the fuck up, we will tell you why you are being stopped.” PO Figueroa and PO Leek denied that they ever used discourteous language in speaking with § 87(2)(b).

§ 87(2)(g)

**Allegation G-Abuse of Authority: PO Edgar Figueroa refused to provide his shield number to § 87(2)(b)**

**Allegation H-Abuse of Authority: PO Daniel Leek refused to provide his shield number to § 87(2)(b)**

§ 87(2)(b) alleged that he asked the officers for their names and badge numbers, but they did not answer him. § 87(2)(b) however, provided PO Figueroa’s name and both officers’ shield numbers in his letter to the CCRB. In his sworn statement, § 87(2)(b) remembered PO Figueroa’s name and stated that he asked him for his shield number. Both officers acknowledged that § 87(2)(b)



§ 87(2)(b) asked them for their names and badge numbers. The officers testified that they provided the information in full. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g).

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Team: 5

Investigator: _____	Noemi Martin	May 4, 2012
Signature	Print	Date

Supervisor: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date